

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: LATEX GLOVES	:	MDL Docket No. 1148
PRODUCTS LIABILITY	:	
LITIGATION	:	This Document Relates
	:	To All Cases

CASE MANAGEMENT ORDER NO. 7
PROTECTIVE ORDER GOVERNING CONFIDENTIALITY

AND NOW, this 29th day of May, 1997, the following Protective Order is entered, Fed. R. Civ. P. 26(c)(7):

1. All documents¹ containing a trade secret or other confidential information may be designated "Confidential," so long as such documents have not been disclosed by the producing party to anyone other than those persons employed or retained by it. Such documents or portions of documents will be designated, after review by an attorney for the producing party, by stamping the "Confidential - MDL No. 1148" on each page.

¹ "Document" includes, without limitation, writings, drawings, graphs, charts, photographs, physical objects, things, deposition, hearing, and trial transcripts, discovery responses, phone records, and other data compilations, together with all writings whether typed, handwritten, printed or otherwise, as well as all tape recordings, computer tapes, discs, software and other electronic, magnetic, or mechanical recordings, however produced or reproduced, and information stored in a computer whether or not ever printed or displayed, and includes the original and all copies. "Confidential information" means any information contained in or necessarily derived from a "Document" stamped "Confidential" or "Confidential-Counsel Only." In these definitions, a reference in the singular or plural shall be considered to be both.

2. Any party may contest the designation of a document as "Confidential" or request that a document not otherwise covered by this order be considered confidential by applying to the Court or Special Master (Case Management Order No. 1-A) for a ruling. In either event, counsel shall first make a good faith effort to resolve the issue. E.D. Pa. Local R. 26(f); Case Management Order No. 5, ¶ 6. The party requesting confidentiality shall have the burden of showing that such designation is appropriate.

3. Any party to this litigation or non-party that produces or discloses documents or confidential information that it believes should be limited to counsel only² may so designate as "Confidential-Counsel Only." Such documents or portions of documents will be designated, after review by an attorney for the producing party, by stamping the "Confidential - Counsel Only - MDL No. 1148" on each page. The same procedures and burden of proof set forth in ¶ 2 shall apply to such designations. Documents so designated may also be disclosed to independent third parties retained to furnish expert services or advice, or to give expert testimony in a given action.

² "Counsel Only" shall mean counsel of record in a given case and other attorneys and staff in their law firms, together with no more than three designated in-house corporate counsel of any party and necessary staff.

4. Upon pretrial deposition, or within 15 business days after receipt of the transcript, a party may designate as confidential any appropriate information, which designation shall be served on all counsel. No confidentiality objection need be made at a deposition and shall not be a ground for a direction or refusal to answer. Depositions and transcripts will be considered to be confidential for the 15-day period and thereafter if so designated. Any individual not authorized by this Protective Order to be a recipient of confidential information may be excluded from a deposition while such information is being elicited.

5. Any document or other information the confidentiality of which is in dispute shall remain Confidential or, if requested, Confidential-Counsel Only, until the dispute is resolved in writing by counsel or, if necessary, until order of Court. Applications shall be by joint submission in which each side, or all sides, set forth seriatim their positions on each separate matter of issue in dispute.

6. Subject to ¶ 7, infra, no one may use confidential documents or information that are subject to this Protective Order other than in the context of this MDL litigation and other than individuals who are hereby authorized. Such individuals shall include counsel, the parties' specifically authorized employees,³

³ Authorized employees shall be those identified by a
(continued...)

experts, fact witnesses, together with such others as are approved by this Court. Each individual who is permitted to see such confidential documents shall first be shown a copy of this order and, if a party's authorized employee, a party in a state court case or their counsel, an expert, fact witness, or in-house counsel, shall be required to be bound to observe the provisions of this order with respect to all documents and information produced through these MDL proceedings by signing a Non-Disclosure Agreement approved by the Court. Parties and their counsel in state court cases who so agree and sign the Non-Disclosure Agreement are authorized to have access to such documents and information as may be subject to this Protective Order, unless good cause is shown to withhold the authorization. Such access shall be subject to any Court-approved charges. The resisting party shall have the burden of showing why such disclosure should not be made. The Non-Disclosure Agreement shall include an agreement to submit to the Court's jurisdiction for enforcement of the Protective Order and to return all documents and information promptly at the end of the litigation. Subject to the other provisions of this Protective Order, parties and their counsel may have access to the confidential documents and information of a producing party so long as they are co-parties in at least one pending action.

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party and agreed to in writing by counsel for the producing party or approved by the Court.

7. Where a party intends to show a document or documents designated by the producing party as "Confidential" or "Confidential-Counsel Only" to another party's unauthorized employee or to a fact witness, the party intending to show such document or documents shall provide 10 days written notice to the producing party which designated the document or documents as "Confidential" or "Confidential-Counsel Only." Such written notice shall identify the person to whom disclosure is contemplated and the specific documents or information proposed for disclosure. If the producing party has objection to the disclosure of such document or documents to the other party's employee or to the fact witness, and so indicates in writing, disclosure of the document or documents shall not be made absent stipulation between the producing party and party seeking disclosure, or court order. If the producing party and party seeking disclosure are unable to reach a stipulation, the producing party may submit the dispute to the Special Master within seven days of receiving written notice. The document or document(s) at issue will not be shown to the unauthorized employee or fact witness unless a stipulation is reached or order an is entered.⁴

⁴ The procedure set forth in this paragraph will be subject to periodic review by the Court for necessity and practicality. The parties shall exert every reasonable effort to avoid the delay and expense that may be occasioned by this procedure and to resolve disputes without court intervention.

8. No recipient of documents or information under this Protective Order may disclose such information to any unauthorized individual. Any originator, author, or recipient of a document, as identified on its face, may be shown the document.

9. Any document or information designated as "Confidential" or "Confidential-Counsel only" shall be filed under seal with the Court in the event that a filing is necessary. All such filings shall be placed in sealed envelopes setting forth the caption of the action, the title of the document or other reference and a notation that -

This envelope is not to be opened or the contents displayed or disclosed except by Court order or written approval of the parties.

If for any reason such information is no longer deemed confidential by reason of Court order, the seal may be removed at the Court's discretion.

10. If a confidential document or information is inadvertently produced without being designated as "Confidential" or "Confidential-Counsel only," the producing party may so advise the recipient in which event the recipient shall exert every reasonable effort to treat the document or information as though timely designated and shall cooperate in its retrieval.

11. The prevailing party in any dispute submitted under this order to the Court or Special Master may recover an award of expenses, including attorney's fees, if approved by the Court.

12. By Monday, June 9, 1997 the parties shall enter into other procedural agreements, such a non-presumption, non-waiver, return of documents upon final order, as may be conducive to carrying out this order.

13. This Court shall retain jurisdiction over the parties and any other persons subject to the terms of this Protective Order for the purpose of enforcing this Protective Order, notwithstanding any subsequent disposition of this action.

Edmund V. Ludwig, J.